



McGeorge Law Review

Volume 19 | Issue 2

Article 33

1-1-1988

Trusts

University of the Pacific; McGeorge School of Law

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Trusts*, 19 PAC. L. J. 713 (1988).

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Trusts

Trusts; trust law

Civil Code §§ 5110, 5125, 5127 (amended); Probate Code §§ 82, 15210, 15805, 16082, (new); §§ 104, 13504, 15003, 15405, 15410, 15803, 16062, 16063, 16222, 16303, 16441, 17457 (amended).

AB 362 (Harris); 1987 STAT. Ch. 128

(*Effective July 1, 1987*)*

SB 1337 (Bergeson); 1987 STAT. Ch. 1184

Existing law excludes specified entities and relationships from the definition of trust.¹ Chapter 128 clarifies the Legislature's intent that the principles and procedures of the Trust Law may be applied, where appropriate, to excluded entities and relationships.² Under prior law, a charitable trust not subject to the jurisdiction of the Attorney General was excluded from the definition of trust.³ Chapter 128 includes these trusts within the definition of trust.⁴ Furthermore, Chapter 128 subjects the Attorney General to the same limitations as other beneficiaries of a revocable living trust.⁵

* Pursuant to existing law, new comprehensive trust legislation known as the Trust Law became operative on July 1, 1987. CAL. PROB. CODE § 15000. *See generally Review of Selected 1986 California Legislation*, 18 PAC. L.J. 433, 749-69 (1986) (detailed analysis of the new Trust Law). Chapter 128 makes substantive revisions and technical nonsubstantive changes in order to clarify and expand upon the new Trust Law. *See infra* notes 1-18 and accompanying text (substantive revisions). *See also* CAL. PROB. CODE § 15210 (Chapter 1184 adds to existing law the provision that a trust relating to real property may be recorded in the county where the real property is located). In order to facilitate implementation of the new Trust Law, Chapter 128 is also operative as of July 1, 1987. 1987 Cal. Stat. ch. 128, sec. 21, at — (urgency statute to go into immediate effect).

1. CAL. PROB. CODE § 82(b)(1)-(14) (for example, security arrangements, pension trusts, voting trusts, liquidation trusts, and certain business and investment trusts).

2. *Id.* § 15003(c) (principles or procedures of Trust Law may be applied to an excluded entity or relationship in accordance with common law or statutory principles, or by contract, court order, or rule). *See also id.* §§ 15003 (constructive and resulting trusts unaffected), 15002 (common law as law of state).

3. 1986 Cal. Stat. ch. 820, sec. 28, at 955 (amending CAL. PROB. CODE § 82).

4. CAL. PROB. CODE § 82 (definition of trust).

5. *Id.* § 15805. *See generally id.* §§ 15800-15802 (limitations on rights of beneficiary of revocable living trust).

Under existing law, a trustee has the power to terminate a trust because of uneconomically low principal.⁶ Existing law specifies that the property of a trust terminated for uneconomically low principal must be distributed in the manner provided in the trust instrument, or as directed by a court to conform as much as possible with the settlor's intent expressed in the trust instrument.⁷ Chapter 128 permits this distribution without a court order.⁸ Furthermore, if the trust instrument does not provide for distribution or adequately express the settlor's intent, the trustee may distribute the trust property on an actuarial basis to the living beneficiaries.⁹ A power to appoint or to distribute income or principal, however, may not be used to discharge the personal legal obligations of the person holding the power.¹⁰

Existing law specifies that a trustee may operate a business or enterprise that is part of the trust property only as authorized by the trust instrument or the court.¹¹ Chapter 128 excludes from this requirement the lease of four or fewer residential units, by specifying that the lease is not considered to be the operation of a business or enterprise.¹²

While imposing certain accounting requirements¹³ upon a trustee of a living or testamentary trust, existing law exempts from these duties a trustee of a living trust executed before July 1, 1987.¹⁴ Chapter 128 clarifies the application of these accounting requirements to testamentary trusts created before July 1, 1987.¹⁵

6. *Id.* § 15408(b) (trust principal not exceeding \$20,000 in value).

7. *Id.* § 15410(c).

8. *Id.* § 15410(d).

9. *Id.*

10. *Id.* § 16082 (unless specified otherwise in the trust instrument, an individual or trustee holding a power to appoint or distribute income or principal is prohibited from using the power to discharge the individual's or trustee's legal obligations).

11. *Id.* § 16222(a)-(c) (except that a trustee may operate the business or enterprise for a reasonable time pending the business' or enterprise's sale or a court hearing).

12. *Id.* § 16222(b). The residential units may be on one or more lots or in one or more buildings. Communication from the California Law Revision Commission Concerning Assembly Bill 362, 2 (Comment to California Probate Code section 16222) (on file at *Pacific Law Journal*). Furthermore, these restrictions on a trustee's participation in business do not apply to a trust created by an instrument executed before July 1, 1987. CAL. PROB. CODE § 16222(d).

13. CAL. PROB. CODE § 16062 (trustee required to account to beneficiaries at least annually, when trustees are changed, and at termination of the trust, except where exempted by this section or California Probate Code section 16064). See generally *id.* § 16064 (trustee not required to account to beneficiary when the account is waived by the beneficiary or the trust instrument, when beneficiary and trustee are one, and during the time that a trust is revocable). See generally *id.* § 15800 (limitations on rights of beneficiary).

14. *Id.* § 16062(b).

15. See *id.* § 16062 (generally exempting testamentary trusts created by wills executed

Existing law provides that the administration of a trust transferred to the State is the same as that of a trust created in the State.¹⁶ Chapter 128 recognizes that this provision does not govern rules¹⁷ affecting the validity of a trust or the construction of a trust's beneficial provisions.¹⁸

LJN

before July 1, 1987 from accounting requirements, but applying the accounting requirements to testamentary trusts removed from continuing court jurisdiction under California Probate Code sections 17350-17354). *See generally id.* §§ 17350-17354 (removal of trusts from continuing court jurisdiction). Compliance with California Probate Code section 16063 will satisfy these accounting requirements. *Id.* § 16062(d). *See generally id.* § 16063 (contents of account).

16. *Id.* § 17457.

17. *E.g., id.* § 15400 (limitation on the California rule presuming the revocability of a trust not expressly made irrevocable by the trust instrument).

18. *Id.* § 17457.

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